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Candace Havens  
Director

## WORKING SESSION MEMORANDUM

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**DATE:** May 10, 2013

**TO:** Alderman Marcia T. Johnson, Chairman  
Members of the Zoning and Planning Committee

**FROM:** Candace Havens, Director of Planning and Development  
James Freas, Chief Planner, Long-Range Planning 

**RE:** #146-13: THE ZONING & PLANNING COMMITTEE requesting information from the Planning Department concerning the nature and character of vacant lots that were confirmed as unbuildable by the Mauri Appeals Court decision.

**MEETING DATE:** May 13, 2013

**CC:** Board of Aldermen  
Planning and Development Board  
Donnalyn Kahn, City Solicitor

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### INTRODUCTION

On March 27, 2013 the Zoning and Planning Committee discussed a proposed amendment to the Newton Zoning Ordinance which would have allowed for the development of legally undersized lots in common ownership with an adjacent parcel where there was a minimum lot size of 5,000 square feet and 50 feet of frontage. The amendment would have allowed for the continuation of a practice of granting such building permits that was based on a 2001 zoning ordinance amendment, the interpretation of which was found to be in error by the Massachusetts Appeals Court in the Mauri decision referenced in the docket language. In the discussion, members of the Board of Aldermen requested additional information with regard to the lots affected by this decision.

The Planning Department conducted an analysis of vacant residential parcels to determine that there are 103 lots in common ownership with a neighboring property, which, for the purpose of zoning, are effectively merged. In many cases, these effectively merged lots are significantly bigger than the

majority of the existing residential lots in each respective neighborhood with a number of implications for what can be built there in the future. In addition, there are seven built lots rendered non-compliant as a result of the court decision. A proposed zoning ordinance amendment to address this issue is presented in a Planning Department memo on petition #77-13.

## **DATA ANALYSIS**

Staff sorted residential properties in common ownership located on the same street where one or more of the identified lots was listed as vacant. This list was further sorted to remove those that met lot size and frontage standards and the resulting list was spot-checked on the map to verify that the identified lots were contiguous. The resulting list identifies 103 properties as shown on the attached map.

The 103 properties identified should not be considered a definitive list of those lots that could or would be built on if that option were enabled in the zoning ordinance. Many lots could have restricted development rights due to wetlands or other conservation-related features. Further, each lot must still demonstrate that a proposed development can meet parking standards. Finally, some lots are not able to adequately demonstrate that the lots were not merged by deed in the past, effectively eliminating the second lot.

## **IMPLICATIONS**

As these lots are effectively merged under the Zoning Ordinance, each represents a lot that in many cases will be significantly larger than the majority of other lots in the neighborhood. Like most suburban communities, as lots for residential development were created in Newton over time, they were laid out in uniform patterns. As lots were sold for development, some people chose to purchase more than one lot, whether for investment purposes or to allow for a larger yard. These combined lots stand out as being significantly larger even as the house is otherwise in scale with the neighborhood. Under the zoning regulations though, the potential size of a new house is defined, in part, by the size of the lot. These now merged lots have the potential therefore to have new homes built that are significantly larger than those in the current neighborhood. In the last year there have been two properties that have received demolition permits in order to build very large homes on such merged lots and those projects are proceeding.

Many have noted that even the lots that are uniform with the neighborhood are seeing new homes being built that are typically larger than the existing homes in the neighborhood. There is a significant difference in that the traditional, smaller lots are also generally longer than they are wide. Given side setback requirements on these narrow lots, the new homes are roughly as wide as the adjacent homes. From the street, these new homes appear to be generally in scale with the neighborhood. One has to view a home from the side to see how the extra square footage has been incorporated into the back. Further, these large homes on small lots in many cases require a special permit to exceed the FAR limits providing an opportunity for review and mitigation.

Merged lots are significantly wider than other lots in the vicinity upon which a larger new home can be built. While there is greater flexibility in the placement and size of new homes on these larger lots, development of such lots typically preserves private yard space at the rear of the property and large, wider-than-average homes relative to others in the neighborhood.

### NON-COMPLIANT LOTS

As best as can be determined at this time, Staff believes that there are seven lots with built homes rendered non-compliant as a result of the court decision. At the April 22<sup>nd</sup> meeting staff identified nine lots and an additional one was added during the course of the meeting. Since then, with further investigation, two of these were found to qualify under “old lot” standards. A third lot, which received its building permit in 2001, was found to have received a variance allowing a 5,000 square foot lot with 50 feet of frontage in 1973. The remaining seven lots are identified on the attached map and listed below.

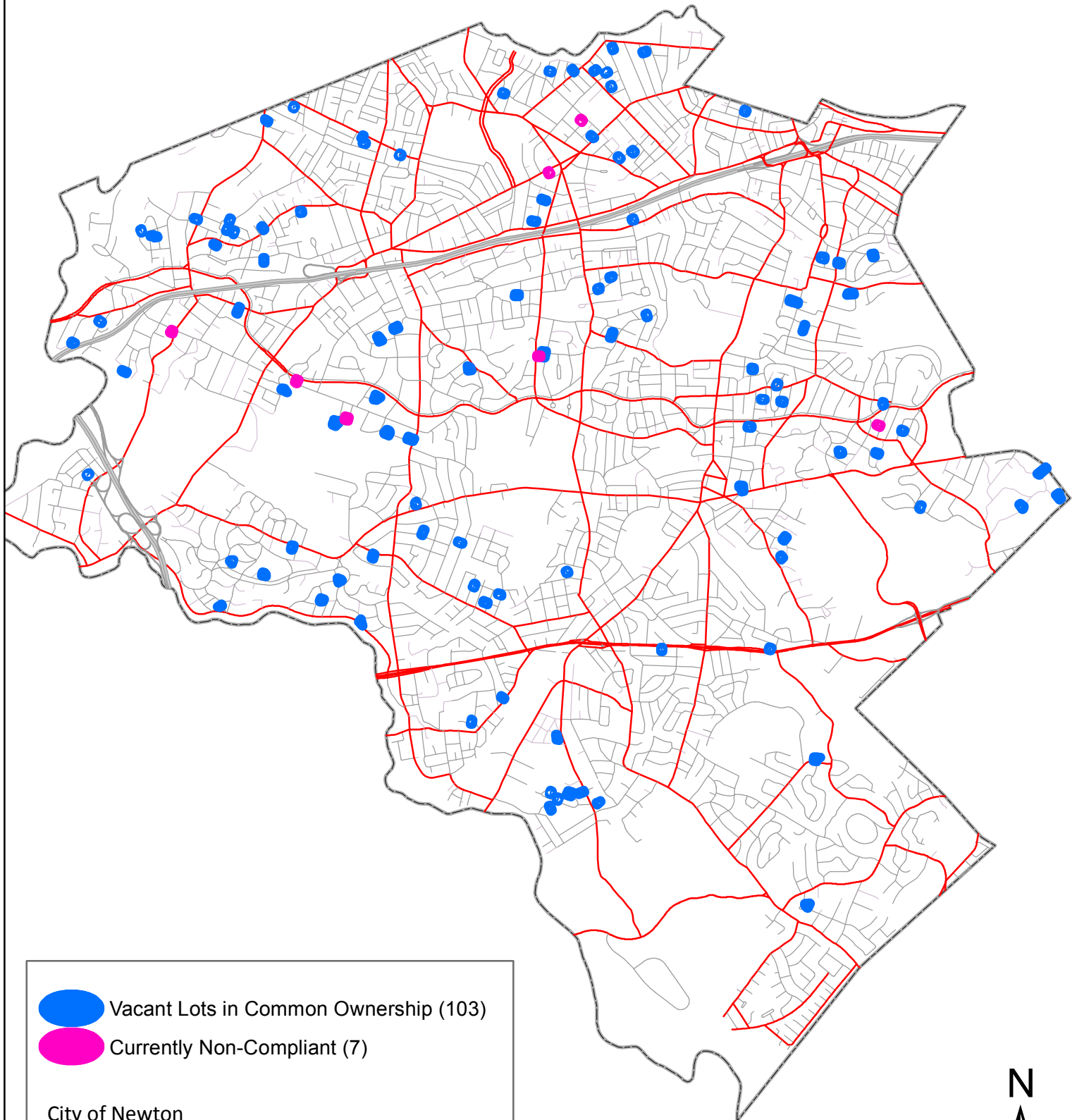
ADDRESS	STREET	PERMIT ISSUED	CERTIFICATE OF OCCUPANCY ISSUED	LOT SIZE	FRONTAGE	ZONE
7	Churchill Street	1/16/2005	3/14/2007	6242	66	MR1
91	Woodland Road	7/25/2006	3/8/2007	8950	60	SR3
470-472	Lowell Ave	5/16/2011	12/16/2011	7400	65	MR1
1682	Commonwealth Ave	9/13/2006	6/20/2008	9500	85	SR2
101	Manet Road	8/4/2006	4/29/2008	6812	60	MR1
43	Rossmere St	1/14/2003	7/13/2003	6278	61	MR1
86	Pickwick	11/9/2004	11/16/2005	12075	100	SR1



### POSSIBLE POLICY RESPONSES

As is recommended in the *Comprehensive Plan*, the likely best approach to attempting to resolve this issue would be to more closely investigate the characteristics and urban form of Newton’s existing neighborhoods, engage residents in conversations about their expectations with regard to their homes and neighborhoods, and to use this collective feedback to craft policies and regulations to govern the diverse neighborhoods and housing stock of the City. Such an approach could be incorporated into Phase 2 of Zoning Reform and would likely result in a new set of residential zoning districts that are more closely related to the City’s existing neighborhoods and the goals of the *Comprehensive Plan*:

*“Development is to be guided to reflect the character held or sought by existing residential neighborhoods, protecting the qualities of that which exists. That often but not always means minimizing changes: well-designed change can strengthen existing qualities. Sometimes residents feel that the opportunity to make change is a valuable part of the character of their part of the City2, while in other areas even small departures from what exists are viewed with dismay. In all of the places in the City, the well-considered views of that place should be given great respect in land management policies and decisions.” (Land Use Overview, page 3-6)*

# Lots Affected by the February 2012 Appeals Court Decision



-  Vacant Lots in Common Ownership (103)
-  Currently Non-Compliant (7)

City of Newton  
Planning & Development Department  
May 10, 2013

